WR Grace

SR00000639

Bankruptcy Form 10

Index Sheet

Claim Number: 00013966

Receive Date: 03/31/2003

Multiple Claim Reference

Claim Number _____

- ☐ MMPOC Medical Monitoring Claim Form
- ☐ PDPOC Property Damage
- ☐ NAPO Non-Asbestos Claim Form
- ☐ Amended

Claim Number _____

- ☐ MMPOC Medical Monitoring Claim Form
- ☐ PDPOC Property Damage
- ☐ NAPO Non-Asbestos Claim Form
- ☐ Amended

Attorney Information

Firm Number: 00362

Firm Name: Ford Marrin Esposito Witmeyer & Gleser LLP

Attorney Number: 00241

Attorney Name: Elizabeth Decristofaro

Zip Code: 10005-1875

Cover Letter Location Number: SR00000639

Attachments Medical Monitoring	Attachments Property Damage	Non-Asbestos
☐ TBD	☐ TBD	☒ Other Attachments
☐ TBD	☐ TBD	
☐ TBD	☐ TBD	
☐ TBD	☐ TBD	
☐ TBD	☐ TBD	
	☐ Other Attachments	

Other

- ☐ Non-Standard Form
- ☐ Amended
- ☐ Post-Deadline Postmark Date

Box/Batch: WRBF0046/WRBF0182

Document Number: WRBF009054

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF Delaware

GRACE NON-ASBESTOS PROOF OF CLAIM FORM

Name of Debtor:[1] Homco International, Inc.

Case Number 01-1185

NOTE: Do not use this form to assert an Asbestos Personal Injury Claim, a Settled Asbestos Claim or a Zonolite Attic Insulation Claim. Those claims will be subject to a separate claims submission process. This form should also not be used to file a claim for an Asbestos Property Damage Claim or Medical Monitoring Claim. A specialized proof of claim form for each of these claims should be filed.

Name of Creditor (The person or other entity to whom the Debtor owes money or property): Continental Casualty Company, Transportation Insurance Company, and any affiliated entities.

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

☐ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Name and address where notices should be sent:
c/o Elizabeth DeCristofaro, Esq.
Ford Marrin Esposito Witmeyer & Gleser
Wall Street Plaza, 23rd Floor
New York, NY 10005
(212)269-4900

Account or other number by which creditor identifies Debtor:

Check here ☐ replaces
if this claim ☐ amends a previously filed claim, dated: _____

Corporate Name, Common Name, and/or d/b/a name of specific Debtor against whom the claim is asserted:
Homco International Inc.

1. Basis for Claim
- ☐ Goods sold
- ☐ Services performed
- ☐ Environmental liability
- ☐ Money loaned
- ☐ Non-asbestos personal injury/wrongful death
- ☐ Taxes
- ☒ Other 3

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)
☐ Wages, salaries, and compensation (fill out below)

Your SS #: _____ _____ _____
Unpaid compensation for services performed
from _____ to _____ (date)

2. Date debt was incurred: 4

3. If court judgment, date obtained: --

4. Total Amount of Claim at Time Case Filed: $ unliquidated 5

If all or part of your claim is secured or entitled to priority, also complete Item 5 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Classification of Claim. Under the Bankruptcy Code all claims are classified as one or more of the following: (1) Unsecured Nonpriority, (2) Unsecured Priority, (3) Secured. It is possible for part of a claim to be in one category and part in another. CHECK THE APPROPRIATE BOX OR BOXES that best describe your claim and STATE THE AMOUNT OF THE CLAIM AT TIME CASE FILED.

☐ SECURED CLAIM (check this box if your claim is secured by collateral, including a right of setoff.)

Brief Description of Collateral:

☐ Real Estate ☐ Other (Describe briefly) _____

Amount of arrearage and other charges at time case filed included in secured claim above, if any: $_____

Attach evidence of perfection of security interest

☒ UNSECURED NONPRIORITY CLAIM 6

A claim is unsecured if there is no collateral or lien on property of the debtor securing the claim or to the extent that the value of such property is less than the amount of the claim.

☐ UNSECURED PRIORITY CLAIM - Specify the priority of the claim.

- ☐ Wages, salaries, or commissions (up to $4650), earned not more than 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3).
- ☐ Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4).
- ☐ Taxes or penalties of governmental units - 11 U.S.C. § 507(a)(7).
- ☐ Other - Specify applicable paragraph of 11 U.S.C. § 507(a(_____).

6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

7. Supporting Documents: *Attach copies of supporting documents,* such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.

8. Acknowledgement: Upon receipt and processing of this Proof of Claim, you will receive an acknowledgement card indicating the date of filing and your unique claim number. If you want a file stamped copy of the Proof of Claim form itself, enclose a self addressed envelope and copy of this proof of claim form.

This Space is for Court Use Only

Date 3/30/03

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):
Continental Casualty Company, Transportation Insurance Company, and any affiliated entities, by their Attorneys, Ford Marrin Esposito Witmeyer & Gleser
Elizabeth DeCristofaro
Ford Marrin Esposito Witmeyer & Gleser

WR Grace BF.46.182.9054
00013966
SR=639

REC'D MAR 31 2003

[1] See General Instructions and Claims Bar Date Notice and its exhibits for names of all Debtors and "other names" used by the Debtors.

PROOF OF CLAIM

1 This proof of claim is filed in the Chapter 11 proceedings of W.R. Grace & Co. , and W.R. Grace & Co.- Conn., as well as other Grace co-debtors (collectively, "Grace").

2 This proof of claim is filed on behalf of Continental Casualty Company, Transportation Insurance Company, and any other entity affiliated with or related to those companies (collectively referred to as "CNA") that is claimed to be liable in connection with the allegations of the attached complaint, *Pennock, et al. v. Maryland Casualty Co., et al.*, Montana First Judicial District Court. Co. , No. CDV-2002-233, and/or any other action against CNA arising out of the operations of W.R. Grace & Co. (or any entity related or affiliated) in Libby, Montana or elsewhere, in which it is alleged that the claimant suffered injury, damages or loss as a result of those operations or otherwise resulting from the manufacture, processing, sale or other conduct concerning asbestos-containing vermiculite or other products/operations. The *Pennock* action and other similar actions are presently stayed by order of the bankruptcy court.

3 The *Pennock* action alleges that CNA was the workers' compensation carrier for Grace and thereby assumed liability to plaintiffs for wrongdoing by Grace in connection with Grace Libby, Montana operations. *See* complaint attached. CNA claims indemnification and/or contribution, and/or other appropriate reimbursement or relief, in connection with any liability CNA incurs in connection with *Pennock* and such actions as described above, to the extent that under the facts of a specific claim, such is owed to CNA by Grace under each applicable agreement between CNA and Grace or under the terms of CNA's undertaking to provide insurance or services to Grace. This includes but is not limited to, agreements concerning each policy of insurance issued by CNA to Grace alleged in the *Pennock* complaint and/or other agreements with Grace during that period by which CNA is alleged to have assumed any duties to the claimants, as well as other agreements and releases related to the Grace policies of insurance, as to which the Debtor has already stated that it may owe such obligations.

Because such actions are presently stayed by order of the Bankruptcy Court, the underlying facts, and alleged bases for potential liability, are subject to further investigation and discovery and CNA reserves the right to amend this claim at any time hereafter, including regarding provisions, terms and conditions as may be applicable to the specific claims as asserted, and to rely on any and all bases for indemnification and/or contribution and/or reimbursement as may be warranted by the facts and circumstances of the claims. (Copies of policies and certain agreements are voluminous, and in some cases, subject to protective order, but are within the possession of the Debtors.)

In the event of CNA's incurring liability arising out of Grace's operations, and/or acts and omissions, as alleged in the *Pennock* action and/or in other actions, as described above, Grace would, additionally or alternatively, be liable to CNA on common law and/or statutory bases. CNA also reserves the right to assert such

other or additional bases for contribution and/or indemnification or other relief, and also to seek appropriate other relief for claims arising post-petition. Nothing contained in this claim should be deemed an admission as to the liability of CNA for any claim asserted in the *Pennock* or other action, or under any agreement or policy of insurance. Creditors file this proof of claim reserving all of their rights under the Bankruptcy Code and without waiver of any position that they may be entitled to take, including without limitation that the creditors' claims for indemnity and/or contribution or other relief are and/or will be post-petition claims and/or that they are not within the ambit of the order setting a bar date for Non-Asbestos Claims. This claim should not be deemed a waiver or release of any rights and remedies available to CNA under applicable law, including but not limited to the right to trial by jury, where applicable.

4 *See* 3 above. As noted above, to the extent a specific claim implicates a particular policy or agreement, the debt may have accrued of the dates policies and agreements implicated by that claim.

5 *See* 3 above re Bankruptcy Court stay of all actions.

6 To the extent this claim is entitled to priority status, CNA hereby reserves and asserts such status. To the extent his claim is neither secured nor entitled to priority status, CNA asserts this claim as general unsecured.

Jon L. Heberling
McGarvey, Heberling, Sullivan & McGarvey
745 South Main
Kalispell, MT 59901
(406) 752-5566

Attorneys for Plaintiffs

COPY

FILED NANCY SWEENEY
BY

MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

ALFRED V. PENNOCK and BETTY L. PENNOCK, husband and wife, ROBERT K. FULLER and BONNIE E. FULLER, husband and wife, CLAUDE D. PAUL and BEVERLY PAUL, husband and wife, ALFRED M. DICKERMAN and LOIS D. DICKERMAN, husband and wife, PATRICIA HELEN KENWORTHY, Personal Representative for JACK D. KENWORTHY, deceased, ROBERT O. BEAGLE and SHERRY L. BEAGLE, husband and wife, FRANKLIN D. WIDIC and SANDRA WIDIC, husband and wife, GERALD CHALLINOR and NONA CHALLINOR, husband and wife, Plaintiffs, v. MARYLAND CASUALTY COMPANY, a Maryland Corporation, CNA INSURANCE COMPANIES, a corporation, CONTINENTAL CASUALTY COMPANY, a corporation, TRANSPORTATION INSURANCE COMPANY, a corporation, and STATE OF MONTANA, a governmental entity, Defendants.	CAUSE NO. CDV-2002-233 **COMPLAINT AND DEMAND FOR TRIAL BY JURY**

COME NOW the plaintiffs and allege as follows.

PARTIES

1. Plaintiffs are listed on Exhibit "A" attached hereto.

2. Maryland Casualty is a Maryland corporation with its principal place of business in Maryland.

3. CNA Insurance Companies (CNA) is a corporation doing business in the State of Montana. Continental Casualty Company and Transportation Insurance Company are companies owned or operated by CAN, and are included in references herein to CNA.

4. The State of Montana is a governmental entity.

FIRST CLAIM

(Negligence v. Maryland Casualty)

5. Plaintiffs were employed by W.R. Grace and Company or its predecessor, at its Zonolite or vermiculite mining and manufacturing operations in Lincoln County, Montana.

6. Throughout the years of plaintiffs' employment, they worked in an environment that caused them to be exposed to and to inhale asbestos dust.

7. At all times plaintiffs were ignorant of the nature and extent of the life threatening risks and injury involved, and would not have continued to work in such an environment if they had known the true facts.

8. W.R. Grace provided its workers no coveralls and no showers. As a result workers went home with asbestos dust on their clothing and in their cars, thereby contaminating family members as well.

9. Without knowledge of the nature and extent of the asbestos hazard, plaintiffs were denied the options of avoiding exposure, demanding protective devices, demanding safer operations, or changing jobs.

10. Plaintiffs Pennock, Paul, Kenworthy and Challinor make the following claims against Maryland Casualty Company.

11. Maryland Casualty Company was the workers' compensation carrier for W.R. Grace from June 30, 1962 to June 30, 1973.

12. Maryland Casualty's professional staff included industrial hygienists and medical doctors with expertise in occupational disease. Maryland Casualty was well aware of the hazards of asbestos exposure.

13. At all times, Maryland Casualty knew of the asbestos disease

exposure at the Grace Libby operations, and that workers were diseased and dying from asbestos exposure, and that a hazardous condition existed.

14. Maryland Casualty knew that at all times asbestos dust readings exceeded the asbestos standard, and knew or should have known that at Grace wherever there was visible dust in the air, there was a violation of the asbestos standard.

15. Maryland Casualty knew that the 1959 series of chest x-rays on the Libby workers showed a one-third incidence of abnormal chest x-rays.

16. Maryland Casualty knew that the 1964-1973 annual series of chest x-rays on the Libby workers showed a 25% plus incidence of abnormal chest x-rays.

17. Maryland Casualty knew that a 1965 study showed 20% incidence of asbestosis in the Libby workers, with a likely incidence of twice that upon thorough testing.

18. Maryland Casualty knew or should have known that from 1961 forward men were dying of asbestos disease, and that each year more became diseased.

19. Maryland Casualty knew or should have known that there were no showers for workers, no coveralls for workers, and that workers went home and into the community covered with asbestos dust, which was hazardous to all those who might come into contact with it.

20. Maryland Casualty's engineering division and medical division undertook to design an industrial hygiene program for control and prevention of asbestos dust and disease for the benefit of the Libby workers, their families and the community.

21. In so doing, Maryland Casualty had a duty of reasonable care to the Libby workers, their families and the community.

22. Maryland Casualty was negligent in design of the industrial hygiene program:

(a) in failing to include sufficient measures for education of workers, in the hazards of asbestos exposure;

(b) in failing to include measures to warn workers, their families, and the community of the hazards of asbestos exposure;

(c) in failing to include sufficient measures and standards for dust control

through housekeeping, ventilation and exhaust air cleaning;

(d) in failing to include sufficient measures and standards for maintenance of equipment and premises; and

(e) in failing to include a sufficient medical monitoring program.

23. Maryland Casualty undertook to provide industrial hygiene services for the benefit of Grace employees, their families and the community.

24. In so doing, Maryland Casualty had a duty of care to the Libby workers, their families and to the community.

25. Maryland Casualty was negligent is this undertaking to provide services:

(a) in failing to recommend or require sufficient measures and standards for employee education, warning the workers, their families and the community, protection against asbestos dust going into workers' homes and into the community, dust control (including housekeeping, ventilation, exhaust air cleaning and maintenance) and medical monitoring;

(b) in failing to sufficiently test and monitor the effectiveness of dust control at all locations where there was dust;

(c) in failing to obtain medical information on the incidence of disease and deaths at the Grace operations from Grace and from public agencies; and

(d) in failing to sufficiently study and use the information on dust control and asbestos disease that it did have.

26. Maryland Casualty's representatives with expertise in industrial hygiene inspected the Grace Libby operations.

27. In so doing, Maryland Casualty had a duty of reasonable care to the Libby workers, their families and to the community.

28. Maryland Casualty was negligent in inspection of the Grace Libby operations, in failing to report and act upon known hazardous conditions due to insufficient worker education, insufficient warnings to workers, their families and to the community, insufficient dust control (including housekeeping, ventilation, exhaust air cleaning and maintenance), and insufficient medical monitoring.

29. Plaintiffs above listed were exposed to asbestos dust and fibers as stated on the chart Exh. A hereto.

30. As a direct and proximate result of the negligence of Maryland Casualty, Plaintiffs above listed have been diagnosed with asbestosis disease on the dates stated on the chart Exh. A hereto, and Jack Kenworthy died of asbestos disease on August 18, 2000.

SECOND CLAIM

(Aiding and Abetting v. Maryland Casualty)

31. All paragraphs above are incorporated by this reference.

32. Maryland Casualty knew the Grace Libby operations were dangerously substandard, and hazardous to workers, family members and community members who came into contact with asbestos dust.

33. Maryland Casualty encouraged, advised, aided, supported, assisted and abetted Grace in its dangerously substandard operation.

34. Maryland Casualty aided Grace with its professional industrial hygiene services.

35. Maryland Casualty designed a dust control program for the Grace Libby operation.

36. Maryland Casualty gave Grace substantial assistance in concealing the asbestos hazard from the workers, the unions and the public. At the time of the first worker's compensation case for asbestosis, Maryland Casualty knew that the only persons aware of the 25% plus incidence of abnormal chest x-rays in the Libby workers was Dr. Little, the radiologist, and Grace. Maryland Casualty recommended that the case be settled to avoid disclosure of the results to the union and to the general public. Also, Maryland Casualty knew of the industrial hygiene reports by the State of Montana, and the findings of dangerous levels of asbestos at Grace. Again, Maryland Casualty recommended settlement to avoid disclosure of the state reports to the unions and to the general public.

37. Maryland Casualty aided and abetted Grace's course of action by concealing the asbestos hazard, and the extent of disease and death, and by failing to warn the workers, their families and the community.

THIRD CLAIM

(Consortium v. Maryland Casualty)

38. All paragraphs above are incorporated by this reference.

39. As a result of the acts of the State of Montana above described, the plaintiffs' spouses listed on Exhibit "A" attached hereto have substantially lost

and will lose the care, comfort and society of their spouses, all to their damage and detriment.

FOURTH CLAIM

(Negligence v. CNA)

Plaintiffs Pennock, Fuller, Paul, Dickerman, Kenworthy, Beagle, Widic and Challinor make the following claims against CNA.

40. All paragraphs above are incorporated by this reference.

41. CNA, through Continental Casualty Co., was the workers' compensation carrier for W.R. Grace from July 1, 1973 to July 1, 1976. CNA, through Transportation Ins. Co. or Continental Casualty Co., was the workers' compensation carrier for W.R. Grace from July 1, 1976 to 1996.

42. CNA is professional staff included industrial hygienists and medical doctors with expertise in occupational disease. At all times CNA was well aware of the hazards of asbestos exposure.

43. At all times, CNA knew of the asbestos disease exposure at the Grace Libby operations, and that workers were diseased and dying from asbestos exposure, and that a hazardous condition existed.

44. CNA knew or should have known that there were no showers for workers, no coveralls for workers, and that workers went home and into the community covered with asbestos dust, which was hazardous to all those who might come into contact with it.

45. CNA undertook to provide industrial hygiene services for the benefit of Grace employees, their families and the community.

46. In so doing, CNA had a duty of care to the Libby workers, their families and to the community.

47. CNA was negligent is this undertaking to provide services:

(a) in failing to recommend or require sufficient measures and standards for employee education, warning the workers, their families and the community, protection against asbestos dust going into workers' homes and into the community, dust control (including housekeeping, ventilation, exhaust air cleaning and maintenance) and medical monitoring;

(b) in failing to sufficiently test and monitor the effectiveness of dust control at all locations where there was dust;

(c) in failing to obtain medical information on the incidence of disease and deaths at the Grace operations from Grace and from public agencies; and

(d) in failing to sufficiently study and use the information on dust control and asbestos disease that it did have.

48. CNA's representatives with expertise in industrial hygiene inspected the Grace Libby operations.

49. In so doing, CNA had a duty of reasonable care to the Libby workers, their families and to the community.

50. CNA was negligent in inspection of the Grace Libby operations, in failing to report and act upon known hazardous conditions due to insufficient worker education, insufficient warnings to workers, their families and to the community, insufficient dust control (including housekeeping, ventilation, exhaust air cleaning and maintenance), and insufficient medical monitoring.

51. As a direct and proximate result of the negligence of CNA, Plaintiffs above listed have been diagnosed with asbestosis disease on the dates stated on the chart Exh. A hereto, and Jack Kenworthy died of asbestos disease on August 18, 2000.

FIFTH CLAIM

(Consortium v. CNA)

52. All paragraphs above are incorporated by this reference.

53. As a result of the acts of CNA above described, the plaintiffs' spouses listed on Exhibit "A" attached hereto have substantially lost and will lose the care, comfort and society of their spouses, all to their damage and detriment.

SIXTH CLAIM

(Negligence v. State of Montana)

54. The listed plaintiffs were employed by W.R. Grace and Company or its predecessor, at its Zonolite or vermiculite mining and manufacturing operations in Lincoln County, Montana.

55. Throughout the years of plaintiffs' employment, they worked in an environment that caused them to be exposed to and to inhale asbestos dust.

56. At all times plaintiffs were ignorant of the nature and extent of the life threatening risks and injury involved, and would not have continued to work in such an environment if they had known the true facts.

57. W.R. Grace provided its workers no coveralls and no showers. As a result workers went home with asbestos dust on their clothing and in their cars, thereby contaminating family members as well. Listed plaintiffs are workers and family members who contracted asbestos disease due to asbestos dust brought home by workers.

58. Without knowledge of the nature and extent of the asbestos hazard, plaintiffs were denied the options of avoiding exposure, demanding protective devices, demanding safer operations, or changing jobs.

59. RCM 1947 § 69-105 (effective 1955 to 1967) provided that the State Board of Health "shall . . . have general supervision of the interests of health and life of the citizens".

60. RCM 1947 § 69-201 (effective 1955 to 1967) provided that the "Board . . . shall . . . execute all of the duties in the field of industrial hygiene".

61. RCM 1947 § 69-4106 (effective 1967 to 1971) provided that the Board "shall . . . (d) . . . enforce . . . for the preservation of public health and prevention of disease".

62. RCM 1947 § 69-4207, now § 50-70-102, MCA (effective 1971 to date) provides for a State policy that "(1) will protect human health and safety . . . (2) [and for a] . . . program of abatement . . . of occupational diseases".

63. RCM 1947 § 69-105 (effective 1955 to 1967) provided that the Board of Health "shall make sanitary investigations and inquiries regarding . . . employment . . .".

64. RCM 1947 § 69-202 (effective 1955 to 1967) provided that the Board of Health "shall . . . (3) make investigations of the sanitary conditions . . . in the various industries".

65. RCM 1947 § 69-4203 (effective 1967 to 1971) provided that the Board of Health "shall . . . investigate the conditions of work . . .".

66. RCM 1947 § 69-4110, now § 50-1-202, MCA (effective 1967 to date) provides that the Board "shall . . . (2) study conditions effecting citizens . . . (3) make investigations . . .".

67. RCM 1947 § 69-4211.1, now § 50-70-105, MCA (effective 1974 to 1999) provided that the Board "shall . . . (6) determine . . . degree of hazard at any workplace".

68. RCM 1947 § 69-202 (effective 1955 to 1967) provided that the

Board "shall . . . (5) . . . work with such industries to remedy unsanitary conditions".

69. RCM 1947 § 69-4203 (effective 1967 to 1971) provided that the Board "shall . . . (4) . . . cooperate with the industry . . . in . . . correcting conditions which are hazardous to health".

70. RCM 1947 § 69-4211, now § 50-70-105, MCA (effective 1971 to 1999) provided that the Board "shall . . . (3) . . . issue orders necessary to carry out this act".

71. RCM 1947 § 69-4211.1, now § 50-70-105, MCA (effective 1974 to 1999) provided that the Board "shall (1) enforce board orders . . . (3) develop . . . plan for . . . abatement . . . of occupational diseases".

72. Montana Constitution, Article IX § 1(1) (effective 1973 to date) provides that "the State and each person shall maintain and improve a clean and healthful environment in Montana . . .".

73. RCM 1947 § 69-105 (effective 1955 to 1967) provides that the Board "shall gather information . . . as it may deem proper for diffusion".

74. RCM 1947 § 69-4110, now § 50-1-202, MCA (effective 1967 to date) provides that the Board "shall . . . (3) make investigations, disseminate information . . .".

75. RCM 1947 § 69-4211.1, now § 50-70-105, MCA (effective 1974 to 1999) provides that the Board "shall . . . (7) disseminate information".

76. In 1956 the State Board of Health, Division of Disease Control, undertook an industrial hygiene study of the Zonolite mine and mill operation at Libby, Montana "to determine if any of the components of this company were detrimental to the health of the employees." The 1956 report, p. 3, found high dust levels, that the dust contained asbestos, and that "the asbestos dust and the dust in the air is of considerable toxicity." The report cited medical literature and described the disease asbestosis. The report cited the 1954 edition of Drinker and Hatch, Industrial Dust, which describes the lung damage done by asbestosis as "permanent" (p.37). Drinker and Hatch note the 1947 total of 160 deaths from asbestosis in Great Britain (p.39). Drinker and Hatch also demonstrate a ten times greater than normal incidence of lung cancer in asbestosis cases (p.46). The 1956 report found dust levels greatly exceeding the asbestos limit, and recommended dust control measures. The 1956 report, p. 6, states:

> Full recognition should be given to the fact that direct control measures alone are usually not enough to insure safe working conditions. The method of operations, proper maintenance of equipment and of housekeeping are equally essential to maintain healthful conditions.
>
> That until such time as the repair and maintenance of both the exhaust and ore conveying systems have been complete, all the men in the dry mill be provided with and required to wear an adequate respirator.

No further action was taken in 1956 and 1957.

77. In 1958, the State Board of Health, Division of Disease Control, undertook another industrial hygiene study of the Zonolite mine and mill operation "to determine if any of the components of this company found to be detrimental to the health of the employees during the last study in August, 1956 had been reduced or alleviated since that time." The report again found dust levels greatly exceeding the asbestos limit, and recommended dust control measures. The report, at p. 8, cites medical literature showing that asbestosis is "a progressive disease with a bad prognosis," often fatal. The report, at p. 8, finds that asbestos dust "concentrations had, as yet, not been reduced to a satisfactory level over all . . . The dry mill still required a considerable amount of work to reduce the dust in this area to an acceptable level." No further action was taken in 1958, 1959, 1960, or 1961.

78. In 1959, the State of Montana, State Tuberculosis Sanitarium treated Glenn Taylor, a Libby Zonolite mine worker, for shortness of breath and asbestosis.

79. In 1961, the State of Montana, through formal death certificate reporting procedures, had notice that Glenn Taylor, a millwright at Zonolite in Libby died of asbestosis, and that Charles Wagner, a mechanic at Zonolite in Libby, died of pulmonary fibrosis.

80. In 1962, the State Board of Health, Division of Disease Control, undertook an industrial hygiene study of the Zonolite mine and mill operation "to determine if any of the components of the operations continued to be a threat to the health of the employees." The report again found dust levels far in excess of the asbestos limit, and recommended dust control measures. The report, at p. 4, concludes "as indicated in the findings of this study, it appeared that no progress had been made in reducing dust concentrations in the dry mill to an acceptable

level and that, indeed, the dust concentrations had been increased, substantially, over those in the past."

81. In 1963, the State Board of Health, Division of Disease Control, undertook an industrial hygiene study of the Grace/Zonolite mine and mill. The report again found dust levels greatly exceeding the asbestos limit, and recommended dust control measures. The report, at p. 3, found a "hazardous condition existing at this plant." No further action was taken in 1963.

82. In April of 1964, the State Board of Health, Division of Disease Control, undertook an industrial hygiene study of the Grace/Zonolite mine and mill "to determine if compliance with previous recommendations for the control of dust had been achieved." The report again found dust levels greatly exceeding the asbestos limit, and recommended dust control measures. The report cited an article by Dr. Irving Selikoff (1964), finding dangerous levels of asbestos disease in asbestos insulation workers with "light intermittent exposure to asbestos." The State knew that the Libby workers had heavy and frequent exposure to asbestos. The 1964 report states at p. 3, "the asbestos content of the material with which you are working appears to provide some serious potential for the development of disease if not properly controlled. In addition, the discharge of large volumes of asbestos-laden dust at ground levels sets up a condition where all members of the plant can be exposed in addition to those who work in the dry mill." The 1964 report, p.3, also warns of "possible widespread carcinogenic air pollution."

83. In September, 1964, the State Board of Health, Division of Disease Control, undertook an industrial hygiene study of the Grace/Zonolite mine and mill "to determine if the concentrations were excessive as has been found in many previous studies." The report again found dust levels greatly exceeding the asbestos limit, and recommended dust control measures. The report states at p. 3 "the dust discharged at ground level from the main dust collection fan was continuously contaminating the whole plant work area and needs to be either raised substantially so the dust-laden air discharges substantially above the plant area or that cleaning be provided. There was much reentry of this dust into the working environment." The report concludes at p. 3 with the "hope that continued work to reduce dust concentrations will be done and that a continuous operation at acceptable levels will be achieved soon."

84. In 1964, the State of Montana, through formal death certificate

procedures, had notice that Albert Barney, a mill worker at Zonolite in Libby died of cor-pulmonale.

85. In 1966, the State of Montana, through formal death certificate reporting procedures, had notice that Walter McQueen, a miner from Libby, died of asbestosis.

86. In 1967, the State Board of Health, Division of Disease Control, undertook an industrial hygiene study of the Grace/Zonolite mine and mill "to determine compliance with previous recommendations." The report, at p. 2, concluded "as in the past, the need for particularly close attention to the functioning of the dust control system, condition of duct work, . . . was apparent. It was also apparent that a strict housekeeping program must be maintained."

87. In November 1967, evidence was presented to the Chairman of the State Industrial Accident Board that another worker at the Grace/Zonolite mine and mill had been diagnosed with asbestosis from work in the warehouse.

88. In 1974 the Montana State Department of Health performed an investigation of the airborne asbestos exposure at the Grace mine and mill. No action was taken.

89. From 1967 to about 1974, Grace regularly reported on the status of dust control at its operations in Libby to the State of Montana.

90. All the above described reports of the State of Montana, Division of Disease Control, were delivered to W.R. Grace & Co., or its predecessor. None of the reports were made public, nor were the Grace workers or their families warned of what the State had found.

91. In 1971-1976, a number of federal agency inspections of the Grace mine and mill showed violations of asbestos dust control requirements. The State of Montana was either a participant in said inspections or was copied in on the reports of said inspections. Federal inspections in 1971, 1972, 1973, 1974 and 1975 found dangerous levels of asbestos dust at the Grace mine and mill. Again the State of Montana did nothing to warn the workers or their families of the dangers of asbestos disease.

92. From 1976 to a date after 1990, the State of Montana continued to inspect the Grace mine and mill for occupational health hazards. In the 1980s and up to 1998, the State of Montana had many occasions to review and act upon matters relating to the W.R. Grace operations. The State never did warn or act

to protect the plaintiffs.

93. By 1971, 14 workers at the Grace mine and mill had died of asbestos disease.

94. The cause of action in this case arose after July 1, 1973, and there is no sovereign immunity. (Art. II §18, 1972 Montana Constitution.)

95. Plaintiffs as employees at the Grace/Zonolite mine and mill operation at Libby, Montana, and family members of employees, were at all times members of the class of persons the above statutes intended to protect from exposure to toxic asbestos dust, found hazardous by the State Board of Health, Division of Disease Control.

96. At all times pertinent herein, the State of Montana had a continuing duty to plaintiffs to gather information, to protect and to warn plaintiffs.

97. The State Board of Health, Division of Disease Control, undertook specific action to cause corrective measures to be taken to protect plaintiffs.

98. The State of Montana negligently failed to take sufficient action to protect plaintiffs from known hazards of asbestos exposure.

99. The State of Montana negligently failed to gather sufficient information as to the extent of disease in workers at the Grace/Zonolite mine and mill operation.

100. The State of Montana negligently failed to warn plaintiffs of the hazards of asbestos exposure.

101. As a direct and proximate result of the conduct of the State of Montana, its agencies and agents as described above, plaintiffs suffer from asbestos disease which was diagnosed on the dates listed on Exhibit "A" attached hereto, due to asbestos exposure from the Grace/Zonolite mine and mill.

SEVENTH CLAIM

(Violation of the Montana Constitution)

102. All paragraphs above are incorporated by this reference.

103. Plaintiffs have the following inalienable rights, pursuant to the Montana Constitution, Article II, § 3:

> All persons are born free and have certain inalienable rights. They include the right to a clan and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways.

104. Plaintiffs have the further constitutional rights pursuant to the Montana Constitution, Article IX, § 1:

> The state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations.

105. The past, present and continuing tremolite asbestos exposures caused and allowed by the State of Montana violate the inalienable right of plaintiffs to a clean and healthful environment, and breach the State's duty to maintain and improve a clean and healthful environment for plaintiffs.

106. As a direct, proximate and legal result of the conduct of the State of Montana, plaintiffs have been exposed to and harmed by dangerous tremolite asbestos.

DAMAGES

107. As a direct and proximate result of the acts of the State of Montana, the plaintiffs have suffered and will suffer:

a. Loss of enjoyment of their established course of life;

b. Loss of services which can no longer be performed;

c. Physical, mental and emotional pain and suffering;

d. Medical expenses, rehabilitation expenses and related expenses; and

e. Loss of insurability for medical coverage.

EIGHTH CLAIM

(Consortium v. State of Montana)

108. All paragraphs above are incorporated by this reference.

109. As a result of the acts of the State of Montana above described, the plaintiffs' spouses listed on Exhibit "A" attached hereto have substantially lost and will lose the care, comfort and society of their spouses, all to their damage and detriment.

DAMAGES

110. As a direct and proximate result of the acts of Maryland Casualty, CNA, and the State of Montana the plaintiffs have suffered and will suffer:

a. Loss of enjoyment of their established course of life;

b. Loss of services which can no longer be performed;

c. Physical, mental and emotional pain and suffering;

d. Medical expenses, rehabilitation expenses and related expenses;

e. Loss of insurability for medical coverage;

and

f. The heirs of Jack D. Kenworthy have suffered and will suffer loss of his care, comfort and society and other damages.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray for damages against Maryland Casualty, CNA, and the State of Montana (not to exceed $750,000 per claim as against the State of Montana) as follows:

1. Reasonable damages for lost enjoyment of established course of life, past and future.

2. Reasonable damages for loss of services which can no longer be performed.

3. Reasonable damages for physical, mental and emotional pain and suffering, past and future.

4. Reasonable damages for medical expenses, rehabilitation expenses, and related expenses incurred to date and reasonably certain to be incurred in the future.

5. Reasonable damages for loss of care, comfort and society.

6. For costs of suit; and

7. For such further relief as is just under the circumstances.

DEMAND FOR TRIAL BY JURY

Claimants hereby demand a trial by jury.

DATED this 21st day of March, 2002.

McGARVEY, HEBERLING, SULLIVAN
& McGARVEY

By: Jon L. Heberling
Jon L. Heberling
Attorneys for Plaintiffs

EXHIBIT A

Plaintiff	Spouse	Place of Residence	Plaintiff's work at W.R. Grace	Family Member	Family member worked at W.R. Grace	Date of Diagnosis/ Death
[illegible] Pennock	Betty L.	Libby, MT	6/2/69 - 9/1/90			4/8/99
Robert K. Fuller	Bonnie E.	Elko, NV	4/20/65 - 9/21/90			5/27/99
[illegible] D. Paul	Beverly	Libby, MT	3/21/69 - 1/1/88			6/10/99
[illegible] Dickerman	Lois D.	Troy, MT	3/11/68 - 10/3/83			4/13/00
[illegible] Kenworthy, PR	Jack D.	Helena, MT		Jack D. Kenworthy	4/10/68 - 4/2/84	8/18/00 death
[illegible] Bengle	Sherry L.	Libby, MT	4/21/69 - 1/1/92			5/30/00
[illegible]klin D. Widic	Sandra	Springcreek, NV	6/2/67 - 1/1/91			10/3/00
[illegible]d Challinor	Nona	Elko, NV	3/2/66 - 9/1/90			7/18/01